

Summary: One defendant filed a motion for continuance of the trial date to allow additional time for his attorney to complete an investigation and prepare for trial. The government did not object to a continuance, but the co-defendant objected on the grounds that he did not wish to be detained longer than necessary. The Court granted the motion as to both defendants finding that, absent a severance of the defendants, exclusions of time under the Speedy Trial Act attributable to one defendant applies to all co-defendants.

Case Name: USA v. Brett Lain St. John

Case Number: 1-07-cr-32

Docket Number: 30

Date Filed: 6/01/07

Nature of Suit:

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United States of America,)	
)	
Plaintiff,)	ORDER GRANTING DEFENDANT
)	ST. JOHN'S MOTION TO
vs.)	CONTINUE
)	
)	Case No. 1:07-cr-032
Brett Lain St. John and)	
Robert Wayne His Chase,)	
)	
Defendants.)	

Before the Court is defendant Brett Lain St. John's "First Motion to Continue" filed on May 24, 2007. Trial is currently scheduled to commence on July 17, 2007. Defense counsel for St. John asserts that he needs additional time to complete his investigation and prepare for trial and requests the trial be continued. The Government does not object to a reasonable continuance. However, counsel for the co-defendant, Robert Wayne His Chase, does object on the grounds that His Chase

does not wish to be detained longer than necessary. Counsel for His Chase asserts that a motion to sever may be filed but no motion has been filed to date.¹

As a general rule, in cases involving multiple defendants, exclusions of time under the Speedy Trial Act attributable to one defendant apply to all co-defendants. United States v. Arrellano-Garcia, 471 F.3d 897, 900 (8th Cir. 2006). See 18 U.S.C. § 3161(h)(7) (providing that a court shall exclude a reasonable period of delay “when the defendant is joined for trial with a co-defendant as to whom the time for trial has not run and no motion for severance has been granted”); United States v. Butz, 982 F.2d 1378, 1381 (9th Cir. 1993) (finding that, for the purposes of determining whether the Speedy Trial Act was violated, trial delay due to a continuance granted to co-defendants applied to defendant as excludable time); see also United States v. Thompson, 866 F.2d 268, 273 (8th Cir. 1989) (stating that “a time exclusion applicable to one defendant applies to all co-defendants”); United States v. Jones, 801 F.2d 304, 316 (8th Cir. 1986).

The Court finds that there is good cause to continue the trial and that the ends of justice are best served by continuing the trial pursuant to 18 U.S.C. §§ 3161(h)(7) and (h)(8)(A). Accordingly, the Court **GRANTS** defendant St. John’s Motion to Continue. (Docket No. 26). The trial shall be rescheduled for Tuesday, August 28, 2007, at 9:30 a.m. in Bismarck before Judge Hovland. A three (3) day trial is anticipated. All time which elapses from the date of this order until trial shall be excluded from any Speedy Trial Act’s calculation. See 18 U.S.C. §§ 3161(h)(7), (h)(8)(A), and (h)(8)(B)(iv).

¹ It is well-established that where the defendants are alleged to have engaged in a conspiracy, joinder is appropriate. United States v. Rivera-Rocha, 430 F.Supp.2d 941, 943 (D.N.D. 2006). As a general rule, persons charged with a conspiracy will be tried together, especially where proof of the charges is based on the same evidence and acts. Id. The defendant has the burden of establishing that a severance is warranted and necessary. Id. at 944.

IT IS SO ORDERED.

Dated this 1st day of June, 2007.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court